

Documentation of Land Use Plan Conformance and NEPA Adequacy (DNA) # 43

Background Information: On December 9, 1999, the Bureau of Land Management (BLM) issued right of way CACA 25594 to Kaiser Eagle Mountain, Inc., a Delaware Corporation, for the construction, operation and maintenance of a road and railroad. The railroad was previously authorized and constructed under the provisions of special legislation for uses associated with the Eagle Mountain Mine. A new authorization was needed to use the railroad for purposes associated with the Eagle Mountain Landfill.

In 2001, Kaiser Eagle Mountain, Inc. and Union Steel Corporation merged with and into Kaiser Eagle Mountain LLC, a Delaware Limited Liability Corporation. As a result of this corporate reorganization, the original holder of right of way (R/W) CACA 25594, Kaiser Eagle Mountain, Inc., no longer exists as a corporate entity and its assets are now controlled by Kaiser Eagle Mountain LLC. Kaiser Eagle Mountain LLC has applied for assignment of the R/W.

Under 43 CFR 2803.6-3 (2004), assignments of R/W must be approved by the authorized officer of the BLM. When approving assignments, the regulations and BLM manual provide the authorized officer may modify or add bonding requirements. However, caselaw (134 IBLA 206) provides that the authorized officer, when approving an assignment, may add terms and conditions if there are convincing reasons to do so.

Under new provisions of 43 CFR 2800, to become effective June 21, 2005, the authorized officer will have the authority to modify terms and conditions of R/Ws when necessary to protect human health and safety and the environment. These regulations will apply to existing rights of ways unless the new regulations reduce the rights previously granted. Generally, adding or modifying terms and conditions is not considered to reduce the rights previously granted.

A. The proposed action is to approve the assignment of right of way CACA 25994 from Kaiser Eagle Mountain Inc., to Kaiser Eagle Mountain LLC. The purpose of this analysis is to:

- Determine if it is in the public interest to approve the assignment.
- Determine if there are convincing reasons to modify the terms and conditions of R/W CACA 25594 as part of the assignment process.

The proposed action (the assignment) does not authorize any surface disturbance. Prior to initiating any construction, operation or maintenance of the R/W, the holder must submit and the authorize officer must approve a plan of development.

Effective June 21, 2005, the new regulations at 43 CFR 2800 will give the authorized officer the authority to modify the terms and conditions of this R/W at any point in the future, if necessary to protect the environment. Since the proposed action does not authorize surface disturbance, there is no reason to consider modifying the right of way as part of approving the assignment.

B. Land Use Plan Conformance.

The applicable land use plan for this area is the 1980 California Desert Conservation Area (CDCA) Plan as amended. The 1980 CDCA Plan for this area has been amended by the Northern and Eastern Colorado Desert Coordinated Management Plan (NECO)(July, 2002), and the CDCA Plan Amendment for the Coachella Valley (October, 2002).

The approval of R/W CACA 25594 in 1999 was in conformance with the general guidelines in the 1980 CDCA Plan, which recognized the need for access across public lands to permit utilization of State and privately owned lands.

The 2002 NECO Plan did not change the general guidelines, but did designate two Desert Wildlife Management Areas (DWMA) and provided general mitigation measures to minimize the impacts of authorized projects on the desert tortoise and its habitat. R/W CACA 25594 crosses through the Chuckwalla DWMA, and it may be appropriate to apply the desert tortoise mitigation measures from NECO to the R/W. Because the terms of R/W CACA 22594 were part of a specific Biological Opinion (BO), in order to retain the protections afforded by the original BO, any new terms must be in addition to, and not replace existing terms and conditions.

Under the terms of R/W CACA 22594, prior to operation and maintenance of the railroad, the holder must submit (and BLM must approve) a plan of development. Because a detailed plan of development for the construction, operation and maintenance of the railroad has not been submitted it would be premature to apply the desert tortoise mitigation measures from NECO to this R/W. The BLM may require the holder to incorporate additional terms and conditions as part of an approved plan of development.

The 2002 CDCA Plan Amendment for the Coachella Valley also did not change the general guidelines in the 1980 CDCA Plan recognizing the need for access across public land. This plan amendment did not impose any specific mitigation measures which may be applicable to the construction, operation and maintenance of R/W CACA 25594.

C. Applicable documents that cover the proposed action.

In approving R/W CACA 25594, the BLM relied on the Final EIS/EIR for the Eagle Mountain Landfill and Recycling Project (January, 1997).

The Eagle Mountain Landfill and Recycling Project was also addressed by the U.S.F.&W.S. in the Biological Opinion (BO) for the Eagle Mountain Landfill Project (Sept. 10, 1992), the Formal Section 7 Conference on the Eagle Mountain Landfill (September 20, 1993) and the Review and Comment on the EIS for the Eagle Mountain Landfill and Recycling Center Project (September 30, 1996).

Prior to issuing the final EIS/EIR, BLM consulted with the State Historic Preservation Office on the effects of the undertaking on historic properties.

D. NEPA Adequacy Criteria.

1. Is the current proposed action substantially the same action (or is a part of that action) as previously analyzed? Is the current proposed action located at a site specifically analyzed in an existing document?

The proposed action, assignment of the R/W CACA 25594, is a part of the entire project, which involved the federal actions of a land exchange and rights, and a State action of landfill permitting. The environmental consequences of the construction, operation and maintenance of R/W CACA 25594 were specifically analyzed in the documents listed in C. above.

2. Is the range of alternatives analyzed in the existing NEPA document appropriate with respect to the current proposed action, given current environmental concerns, interests and resource values?

The Eagle Mountain Landfill and Recycling Project was a highly controversial project when Riverside County and the BLM approved components of project in 1997. The high level of interest and controversy generated during preparation of the EIS/EIR required a comprehensive evaluation of all reasonable and feasible alternatives.

The BLM's decision to approve a land exchange and right of way associated with the project was appealed to the Interior Board of Land Appeals (IBLA). In 1999, the IBLA affirmed BLM's decision and specifically rejected claims that the EIS was inadequate.

The range of alternatives analyzed in the Final EIS/EIR for the Eagle Mountain Landfill and Recycling Project (January, 1997) remains appropriate with respect to the proposed action, given current environmental concerns, interests and resource values.

3. Is the existing analysis valid in light of new information or circumstances? There is no new information that invalidates the analysis completed in the documents listed in C. above. R/W CACA 25594 crosses over critical habitat for the desert tortoise and the F&WS has previously concluded the project would not result in adverse modification this critical habitat. Recently, as a result of federal litigation, the F&WS has indicated it may propose new regulations which could change the definition of what constitutes destruction or adverse modification of critical habitat. Until a new regulatory definition is approved and there is some legal basis for applying the definition retroactively, it would be premature to reconsider the existing analysis.

With respect to historic properties, there has been a change in the circumstances which might affect the evaluation of properties under the National Historic Preservation Act. When the final EIS/EIR for the Eagle Mountain Landfill and Recycling Project was released in January of 1997, the Eagle Mountain Mine, the townsite and the Eagle Mountain railroad were less than 50 years. Generally, properties that are less than 50 years old are not considered eligible for listing on the National Register unless they are considered exceptionally important.

The final EIS/EIR indicates that the Eagle Mountain Mine was determined not be eligible for listing, at least in part because it was not exceptionally important, with other criteria also being considered.

Recently, the possible eligibility of the Eagle Mountain Railroad for listing on the National Register has come up as part of considering the effects of new powerline R/Ws which cross over the railroad. While no one has made a formal assessment of eligibility, the railroad has been characterized as potentially eligible as part of an integrated system involving iron ore mining, transport, and manufacturing on the west coast.

Because the assignment is merely a transfer of ownership that does not approve surface disturbance, the existing analysis remains valid for purposes of approving the assignment. Although the existing analysis remains valid, it is possible that additional measures could be required as part of the approval of a comprehensive plan of development for the R/W.

4. Do the methodology and analytical approach used in the existing NEPA document continue to be appropriate for the current proposed action? The analytical approach used in the final EIS/EIR for the Eagle Mountain Landfill and Recycling Project (January, 1997) resulted a comprehensive list of terms and conditions to R/W CACA 25594. Since the expected use of R/W CACA 25594 will not change as a consequence of the assignment, the previous methodology and analytical approach remains reasonable and appropriate.

5. Are the direct and indirect impacts of the currently proposed action substantially unchanged from those identified in the existing NEPA document? Does the existing NEPA document analyze site-specific impacts related to the current proposed action? Since the expected use of R/W CACA 25594 will not change as a consequence of the assignment, the direct and indirect impacts of assigning the R/W are essentially unchanged from the impacts of granting the R/W considered in the final EIS/EIR for the Eagle Mountain Landfill and Recycling Project (January, 1997). The final EIS/EIR for the Eagle Mountain Landfill and Recycling Project (January, 1997) analyzed the site specific impacts of granting R/W CACA 25594. Because the proposed assignment is merely a transfer of ownership it would not cause or result in any site-specific impacts.

6. Are the cumulative impacts that would result from implementation of the current proposed action substantially unchanged from those analyzed in the existing NEPA document? The final EIS/EIR for the Eagle Mountain Landfill and Recycling Project (January, 1997) analyzed the cumulative impacts of the project, including granting R/W CACA 25594. The assignment of the R/W would not result in any cumulative impacts that were not analyzed in the existing NEPA document.

7. Are the public involvement and interagency review associated with existing NEPA documents adequate for the current proposed action. The Eagle Mountain Landfill and Recycling Project was a highly controversial project when Riverside County and the BLM approved components of project in 1997. The high level of interest and controversy generated during preparation of the EIS/EIR resulted in a high level of public

involvement and interagency review. The EIS/EIR assumed that R/W CACA 25594 would be used as part of a rail haul landfill, to transport waste from the southern California in general. The prior public involvement and interagency review remains valid and adequate to assign R/W CACA 25594 from Kaiser Eagle Mountain, Inc., to Kaiser Eagle Mountain LLC.

E. Interdisciplinary analysis: The following team members participated in the preparation of this worksheet:

<u>Name</u>	<u>Title</u>
Thomas Gey	Realty Specialist
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Conclusion

- ☐ Based on the review documented above, I conclude that this proposed action conforms to the applicable land use plan and that the NEPA documentation fully covers the proposed action and constitutes compliance with the requirements of NEPA. Accordingly, I find no convincing reason to modify the terms of R/W CACA 25594 as a condition of approving the assignment to Kaiser Eagle Mountain LLC.

Gail Acheson, Field Manager

Date